IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 133 of 2003

with

CIVIL APPLICATION No 3650 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NITINBHAI RATILAL PATEL

Versus

SUSHIL CORPORATION - THRO' PROP. HIRABEN MULJIBHAI

Appearance:

1. Civil Revision Application No. 133 of 2003
   MR AJ PATEL for Petitioner No. 1
   MR NANDLAL THAKKAR for Respondent No. 1/1-2
   MR PRAFUL N THAKKAR for Respondent No. 1/1-2
   RULE SERVED BY DS for Respondent No. 3/1-3/3
2. Civil Application No. 3650 of 2003
   MR NANDLAL THAKKAR for Petitioner No. 1
   MR AJ PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/02/2004

ORAL JUDGEMENT

The petitioner herein is the original judgement debtor no.2 against whom a decree for specific performance is passed in Special Civil Suit No.25 of 1984. The Court while passing the decree directed the original plaintiff to deposit remaining amount of consideration within stipulated time.

2 It seems that since there was delay in depositing such amount, as directed in the decree, the respondents herein, who were original plaintiffs in the suit, gave an application for extension of time for depositing the amount and the trial court by its order dated 26th August, 2002 granted such extension by which the original defendants were permitted to deposit the remaining amount in the Court. After such deposit, the decree holder filed execution petition, which is numbered as Darkhast Application No.120 of 2003. In the aforesaid execution petition the petitioner original judgement debtor raised various objections such as maintainability of the execution proceedings on the ground that the decree-holder had failed to deposit the amount immediately and within the stipulated time granted in the decree as well as on other grounds. By the impugned order the executing court after overruling the objections of the judgment debtor passed an order of appointment of Court Commissioner and also further ordered that the Commissioner should take appropriate proceedings for taking necessary permission under the appropriate laws and to execute the document of sale. It is this order which is under challenge in this revision application.

3 On behalf of the opponents learned advocate Mr Nandlal Thakkar, who is appearing as a party-in-person, vehemently submitted that since the execution proceedings are at large, this revision application under Section 115 of the Civil Procedure Code is not maintainable. He further submitted that even on merits the order of the executing court is correct as the executing court cannot go behind the decree and question about extension of time cannot be decided by the executing court as the extension was already given by the court which passed the decree. He has also relied upon Section 28 of the Specific Reliefs Act and submitted that the court has all the power to extend the time.

4 I have heard both the sides at length.

5 Mr A.J. Patel, learned advocate, has also submitted that he concedes that the revision application against such an interlocutory order is not maintainable in view of the amendment in Section 115 of the CPC and since the executing proceedings are not terminated by the impugned order, such order may not fall within the amended provisions of Section 115 of the CPC. He, therefore, seeks permission to withdraw this revision application for filing a writ petition under Article 227 of the Constitution of India or any other proceedings as permissible in law. So far as maintainability of the civil revision application is concerned, since it has been fairly pointed out by learned advocate Mr A.J. Patel as well as Mr Nandlal Thakkar, revision application against such an interlocutory order cannot be entertained in view of the amendment in Section 115 of the CPC. In that view of the matter, when the revision application itself is not maintainable, this Court cannot express its opinion on merits of the issue involved in this revision application in connection with the legality of the order passed by the executing court. Under these circumstances, it is not necessary to examine the merits of the revision application. In that view of the matter, Mr Patel wants to withdraw this Civil Revision Application as, according to him, the petitioner would like to take appropriate remedy as provided in law. Without entering into merits of the case, this CRA is accordingly permitted to be withdrawn as the same is not maintainable. Rule is discharged. Interim relief stands vacated. R & P be sent back to the trial court as the same was called for during the pendency of the Civil Revision Application. In the facts and circumstances of the case, no order as to costs.

In view of the disposal of the main civil revision application, no order on Civil Application No.3650 of 2003.

(P.B. Majmudar, J.)
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